98

Sectt. H-27—40,000—14-10-36.

(193) Department.

SERIES.

G.O. No. 3080

DATED

[Despatch Abstract.]

C.F. 31—17,006—9-2-37.

REVENUE **DEPARTMENT.**

CURRENT No. Rev 5514 L — 10.10.38

Received 19 OCT 1938 19 *Registered* 19

Subject.

ASSESSMENT - Land Revenue - (South Kanara) - Coondapur Taluk - Mudur village - H.No.1 - Arrears - Suspension - Requested.

Ref. C. No. 6364/38-1

Station Madras, *Dated the* 4th October 1938 19

From

D. I. R. Muir, Esq., I.C.S.,

Joint Secretary,

Board of Revenue.

T. Austin, Esq., I.C.S.,

Commissioner of Land Revenue & Settlement.

Read the following:-

I.

(C) AGAIN: G.O.No. Ms. 1870, Revenue, dated 15th September 1937

II.

ALSO: Letter from Sri Rao Bahadur M. V. Vellodi, B.A., Collector of South Kanara, Ref.A.5-4121/38, dated the 24th August 1938.

ASSESSMENT - Land Revenue - Coondapoor Taluk - Mudur village - Holding No.1 - Arrears - Faslis 1342 to 1347 - Recovery - Instructions solicited.

(E) In G.O.No. Mis. 619, Revenue dated the 17th March 1937 communicated in B.P. Routine No.1535, dated the 1st April 1937,

the Government approved the suspension of the collection of the arrears of land revenue relating to faslis 1342 to 1345 due on holding No.1 of Mudur village, Coondappor Taluk till the end of fasli 1347. The collection of the arrears relating to fasli 1346 was also similarly suspended till the end of fasli 1347 in G.O.No.1870 Revenue, dated the 15th September 1937 communicated in B.P. Routine No.4432, dated the 23rd September 1937. The arrears of fasli 1347 have since accrued and the total amount that is now due from the holding is Rs.4,567-7-0.

2. The history of the case was first reported in this office Ref.No.4896/32-A5, dated the 27th July 1932 on which the Board, in B.P. Rout. No.4497, dated the 3rd September 1932 accorded sanction to write off the arrears relating to faslis 1340 and 1341. The later circumstances connected with the case were reported to the Board in (1) Ref.A.5-6078/33, dated the 20th December 1933, (2) Ref.3566-34-A5, dated the 4th August 1934 and (3) Ref.3868-35, dated the 1st November 1935 which led to B.P. Rout. Nos.981, dated 20th February 1934, 4811, dated 10th September 1934 and 659, dated 7th February 1936 respectively. These reports and those that led to the orders quoted in paragraph 1 above may kindly be perused.

3. On enquiries made since, it is learnt that the liquidation proceedings in respect of the Laxmi Forest Co., Ltd., are now pending in the High Court of Madras. The Joint Official Liquidator, however, states that he has filed an execution petition on the mortgage decree held by the Company for bringing the property to sale and that the petition stands posted to 20th September 1938 for notice to the respondents. The sale of the property is not likely to come up for the next two months and it will probably take another month for the execution proceedings to come to a close.

4. With a view to see how the money due to Government could be recovered, I consulted the local Government Pleader in the matter. He states that when the Liquidator or the assignee of the mortgage decree executes the decree and has the property sold, Government cannot claim the sale proceeds, but will be entitled to proceed against the property as a charge holder. A copy of his opinion is enclosed. I concede that in the sale and purchase of the mortgage decree right, Government cannot come in; but I doubt if the Government cannot claim the arrears of land revenue due on the holding from the sale proceeds of the property. I request Board's orders on the point.

5. Even apart from this, the prospects of success at the sale are doubtful. As already stated in the previous reports, the wet lands in the holding have been lying waste for the past several years and a major portion has become inaccessible being overgrown with forest growth. The rest of the holding is mulpatta forest. The property lies in a remote ghaut village The timber in the forest cannot be extracted without considerable expenditure on roads and bridges to facilitate transport. The sale of the property by the Civil Court was once attempted in 1935 and it proved abortive for want of bidders. The present attempt is not likely to meet with better results. As matters stand at present, no action can be taken for the collection of the arrears until the execution petition is disposed of which will take not less than three months. If the sale should prove unsuccessful, there is absolutely no way of recovering the arrears. If the property should be sold away for what it may fetch and the Government cannot claim the sale proceeds as opined by the Government Pleader, the only course left open will be to notify the property for sale under the Revenue Recovery Act for recovering

the

the arrears from the purchaser.

6. In these circumstances, I request the favour of Board's orders as to whether the matter may be allowed to lie over until the disposal of the execution petition.

Letter from Sri K. Sadashiva Rao, B.A., M.L., Government Pleader, Mangalore, Ref.No.A.434/38, dated Mangalore, the 25th July 1938 to the Collector of South Kanara.

ASSESSMENT - Land Revenue - Coondapoor Taluk - Mudoor Village - Holding No.1 - Arrears of faslis 1342 to 1347 - Collection.

Reference: Your letter A5-4121/38, dated the 14th July 1938.

The Laxmi Forest Company now under liquidation holds only a mortgage decree right over the property which still vests with the minor sons of the late Mr. Attavar Rama Rao, Unless the Liquidator himself brings the property to sale in execution of the said decree, what will be sold as the assets of the Laxmi Forest Company will be only the mortgage decree right. In the sale and purchase of the mortgage decree right the Government cannot come in. Even when the Liquidator of the Company or the assignee of the mortgage decree executes the decree and has the property sold, the Government cannot claim the sale proceeds, but will be entitled to proceed against the property as a charge holder.

REFERENCE:-

REFERENCE:-

Submitted to the Government.

2. The Board requests that the Government may be pleased to suspend the collection of the arrears till the end of Fasli 1348.

Fasli 1342 - 47
So 619 (E/ 17 3 37
So 1870 (C) 15-9-37

Ramachandran.
for Joint Secretary.
8.10.38

To

The Secretary to the Government, Revenue Department.

T.D.P.6-10-.

110/TGA 8/10

7

Revenue Department.

Subject:--Assessment - Land Revenue - (South Kanara) - Coondapur taluk - Mudur village - Holding No. 1 - Arrears - Suspension.

C. No. 5514 E/38.

From the Board of Rev., Ref. C. No. 6364/38-1, dated 4-10-1938.

To U.S.

Holding No. I of Mudur village, Coondapur taluk, South Kanara district, stands registered in the names of two minors. The wet lands in the holding have been lying waste for the past several years and a major portion has become inaccessible being overgrown with forest growth. The rest of the holding is mulpatta forest. The timber of the forest cannot be extracted without considerable expenditure on roads and bridges to facilitate transport. The assessment on the holding for faslis 1340 and 1341 were written off the accounts by the Board of Revenue in September 1932.

2. In December 1933, the Collector of South Kanara reported that a Company under the name of "The Lakshmi Forest Company, Ltd." had been started, that it had acquired numerous forest and other lands in the several villages of Coondapur taluk, that it had purchased from the mortgagees of the holding in question the mortgage decree in respect of the properties covered by the holding, that it had applied for execution of the decree, but that the guardian of the minors had filed an appeal in the High Court against the order of the Sub-Court, Mangalore, fixing a date for auction sale. The Collector stated that the appeal appeared to be one in collusion with the Company with the object of delaying the execution and the auction sale of the property so that, in the meantime, the Govt. might

be deprived of their revenue and that the Company might get remission of the assessment as was the case for faslis 1340 and 1341 on the ground that the property belonged to minors. The Collector, therefore, recommended that the collection of the sum of Rs.751-3-0 being the arrears of land revenue on the holding for fasli 1342 should be suspended pending auction of the property in the Civil Court in execution of the decree. The Board supported the Collector's recommendation and the Govt. approved it in G.O. No. 267, Rev., dated 9-2-34. In August 1934, it was reported that the appeal to the High Court mentioned at 'A' on page 1 ante had not been heard and that the circumstances previously reported had not changed. The arrears of fasli 1343 amounting to Rs.859-7-0 was suspended in G.O. No. 1765, Revenue, dated 5-9-1934.

3. In November 1935, the Collector reported that the appeal mentioned at 'A' on page 1 ante had been disposed of, that the sale of the property was fixed for 21-8-1935 but that it was not held for want of bidders and that the execution petition had therefore been closed. He also stated that the Lakshmi Forest Company which was thought to be interested in the lands had got into financial difficultues. He recommended that the Land revenue arrears on the holding in question of faslis 1342 to 1344 might be written off as irrecoverable in the accounts. The Board of Revenue, however, considered that there was a possibility of the property being brought to sale again in execution of the decree and that it was therefore desirable to suspend the collection of the arrears. The Collector had no objection to suspension but pointed out that this procedure would have to be followed every year till the property was brought to sale by Court or till the minors attained majority. The Board recommended suspension of the collection of the arrears relating to faslis 1342 to 1344 for two years and this

recommendation was approved in G.O. No. 227, Rev., dated 3-2-1936. Since then, the Lakshmi Forest Company went into liquidation. In February 1937, the Collector ascertained from the official liquidator that the question of filing fresh execution of the decree was to be considered in the course of the liquidation proceedings. The arrears on the holding relating to faslis 1342 to 1345 were accordingly suspended till the end of fasli 1347 - vide G.O. No. 619, Revenue, dated 17-3-1937. The affairs of the Company continued to be in the hands of the official liquidator. He had no idea of filing fresh execution as the decree right itself would be sold in public auction with the immovable properties of the Company. As there was thus no immediate prospect of realising the arrears on the holding in question, the collection of the arrears relating to fasli 1346 was also suspended till the end of fasli 1347 in G.O. No. 1870, Revenue, dated 15-9-1937.

4. The arrears on the holding for fasli 1347 have since accrued and the total amount now due is Rs. 4,567-7-0. The Collector now reports that the liquidation proceedings in respect of the Lakshmi Forest Co., Ltd., are pending in the High Court. The Joint Official Liquidator is reported to have filed an execution petition on the mortgage decree held by the Company for bringing the property to sale. It is stated that the sale of the property is not likely to come up for the next three months and that even if the sale is held, it is not likely to be successful. In the circumstances, the Collector has requested orders whether the matter might be allowed to lie over till the disposal of the executio petition. The Collector has consulted the Govt. Pleader, Mangalore, on the question as to how the money due to the Govt. could be recovered. The Govt. Pleader's opinion is at p. 4 C.F. He states that

unless the official Liquidator of the Lakshmi Forest Co. himself brings the property to sale, whath will be sold as the assets of the Company will be only the mortgage decree right and that in the sale and purchase of the mortgage decree right the Govt. cannot come in. He also states that even when the Liquidator of the Company or the assignee of the mortgage decree executes the decree and has the property sold, the Govt. cannot claim the sale proceeds but will be entitled to proceed against the property as a charge holder. The Collector agrees with the view at 'B' above but doubts whether the Govt. cannot claim the arrears due on the holding from the sale proceeds of the property and has requested specific orders on this point. The Board has recommended suspension of collection of the arrears till the end of fasli 1348 but has not offered any remarks on the question raised by the Collector. The recommendation of the Board may be accepted. In the circumstances stated by the Collector, Legal may be requested to advise ~~whether~~ (in view of the Govt. Pleader's opinion) what action ~~should~~ Can be taken to recover the arrears.

A draft order is submitted for approval. Necessary additions to it will be made after Legal have seen the file. The file may be sent to Legal with reference to 'X' above and to Finance for acceptance of the draft order.

18.9.38
20/9/38

Attention is invited to B.S.O. 41(21). Re suspensions hitherto ordered are on the lines of the suspension prescribed in B.S.O. 37-B. In this case the land cannot be sold and there are no crops to be attached. But it has been

p 4 cp

'B'

p 4 cp

p ma 4 & p 3 cp

p 5 cp

X & p 4 cp

// Need not be approved now. 18/9/38.

page 381 of Vol II of B.S.O. (Revised)

pp 374-5

-5-11

page 3 c.f.

reporter that a portion of the holding is mulpalta forest. The Lakshmi Forest Co acquires the mortgage decree in respect of the holding in order to cut and sell all the tree growth on the holding. It is for consideration whether the Court ~~should not~~ cannot now sell the trees after attaching them under the Rev Recovery Act, which section 2 of which lays down that the products of the land shall be regarded as the "security of the public revenue" here is forest growth even on the wet lands in the holding and it is possible that the sale of such growth on the entire holding will give the Court something. Legal may be asked to advise on this point as well

p 2 of (A)

p 289 of Bk ~~5~~ 7 (B)

But see A on p. 3 c.f. DW.

2. Apart from the above, the easiest course will be to wait till somebody purchases the holding and then attach & sell the land. The purchaser will take the holding only subject to the charge held by the Court on it.

3. Sir may also see

DW 28/10
S.

DW
29/10

P 7210

ASSISTANT SECRETARY
24 OCT 1938
LEGAL DEPARTMENT.

5574 B/38-1
21.X.38

Legal
Sir

12 to 6

Legal Department.

The opinion of the Government Pleader, Mangalore, at page 4 c.f. is correct. The land revenue is a paramount charge on the land and the land sold in execution of the mortgage decree will be subject to this charge in the hands of the purchaser. The Government cannot claim the proceeds of the sale of the mortgage decree right or of the sale in enforcement of the mortgage decree.

2 X on page 5. Section 63 of the Revenue Recovery Act, says that nothing in the Act shall be held to bar the operation of Regulation X of 1831, in respect to the sale of lands of minors and other disqualified landholders. The first clause of section 2 of Regulation X of 1831 says that no estate, the property of a minor, and descended to him by the regular course of inheritance shall during his minority be sold for arrears of revenue accruing subsequently to his accession to the same. The Advocate-General has given an opinion that section 63 of the Revenue Recovery Act "cannot be read either as in any way restricting the scope of the protection extended to a minor's estate under the terms of the Regulation or in any way impliedly repealing in part the protection extended to a minor under that Regulation" (Regulation X of 1831). It would follow from this that the operation of section 2 of Regulation X of 1831 has been fully preserved by section 63 of the Revenue Recovery Act. As has been pointed out already, under section 2 of that Regulation "no estate, the property of a minor, and descended to him by the regular course of inheritance" can be sold for arrears of revenue. Standing trees in the forest are parts of the estate of the minor and consequently they cannot be sold for arrears

of revenue.

Rev
28/10/38

Rev

Legal Leo. 7210-1
29. 10-38.

Rev. Deptt.

Tour

Please see the notes at pp 1-5 ante and the Legal Deptt's note at pp 6-7 ante. With regd to para 2 of the Legal Deptt's note, attention is invited to the routine note at pp 1 ante. In this case, most of the arrears accrued after the accession of the minors, the position is that the minors' estate cannot be held for the arrears unless accepted. Necessary additions have been made to the draft order below with regd to the Legal Deptt's note. The draft order is submitted for approval. It may be sent to Finance for acceptance.

Rev
2/11/38

2.11.38. Sec 63 of the Rev Recovery Act referred to by Legal expressly protects only the lands of minors but the Advocate General's interpretation is administratively most inconvenient. It means that standing crops cannot be attached and sold and that the Court have to sit and

× Cons 5208/38.
Rev 5/1-56 of
Rev 327 & Rev
Revenue

(2)

(2)

vide pp 1-3 ante
& the reports in
(E).

10 8

watch the minor grow into a major
unless the same crops are raised on the land
subsequent to the inheritance of the estate
by the minor. It is presumed that
only trees standing at the time of the
minor inherits are protected as being
part of the estate inherited and that A
crops raised subsequently are ~~protected~~
not so protected. In view however of the difficulty of
distinguishing between the trees that existed
at the time the estate passed into the
hands of the minor and other trees, all
trees on the land will have to be left alone.
Legal may be requested to make the
position clear as paras 2 of the ~~the~~ order
as drafted ~~will~~ may give the impression that
even crops on the land cannot be proceeded
against. ~~Legal~~ Sir may also see

B

7506

ASSISTANT SECRETARY
4 - NOV 1938
LEGAL DEPT.

5574 Eg. 8.2
3.11.38

PTO

Legal Department.

Perhaps the portion of paragraph 3 of the draft order enclosed in red chalk may be recast as follows:--

"which are permanently attached to the land form part of the estate which descended to the minors by inheritance and consequently cannot be sold during their minority for arrears of revenue which accrued subsequent to their accession."

This will make it clear that only the estate which descended to the minors by inheritance cannot be sold. Standing crops raised after the estate has descended will not be covered by the draft.

15/11/38

Legal 7506-1
16-11-38

Fin.

ASSISTANT SECRETARY TO GOVERNMENT
16 NOV 1938
FINANCE DEPT.

Finance (Accts.)

The case may be perused and returned to Rev.

23.11.38.

24.11.38

25.11.38

Fin no 11457 PS/Accts
26/11/38.

Addl. D.S.

D.W.D.
26/11

Rev

Accts

Rev 6178 E
26.11.38.

Accts

Revised draft after incorporating 'A' above is submitted for approval. It is presumed that Finance accepts para 1 of the draft. Any new view. It seems to be unnecessary to circulate the Case.

29/11

29/11

29/11

S.

Superseded draft

47

REVENUE DEPARTMENT.

C.F.17.

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..		
When copied ..		
When examined..		
When signed ..		
When despatched.		

SUBJECT:—

READ AGAIN Go 619 Rev, dated 17-3-1932. (E)

" " " 1870 Rev " 15-9-1937. (F)

READ *ALSO*:—

No.5514E/38 From the Board of Rev., Ref C. No6364/38-1 dated 4-10-1938

" " " " " 19

" " " " " 19

Order Ms. ~~Resolution Book~~ No. , dated 19.

Proceed as para 3 of Ord (C)

para 1 - Ord

para 5 Ord

The Government approve the proposal of the Board of Revenue that the collection of the arrears of land revenue relating to faslis 1342 to 1347 on holding No. I of Mudur village, Coondapur Taluk, South Kanara district, should be suspended till the end of fasli 1348.

To ~~The Board of Revenue~~.

para 4 as per 3 Ord
+ G P's opinion as per 4 Ord

Rem 18.12.37
B
20.10.38

2. As regards the question raised by the Collector of South Kanara whether, when the property covered by the holding mentioned in para 1 above is brought to sale by the Liquidator of the Laxmi Forest Company or by the Assignee of the mortgage decree over the property, the Govt. can claim the arrears of

-land-

land revenue from the sale proceeds of the property, the Govt. agree with the view expressed by the Govt. Pleader, Mangalore, that the Govt. cannot claim the sale proceeds. The land revenue is however a paramount charge on the land and the land sold in execution of the mortgage decree will be subject to this charge in the hands of the purchaser. The Govt. can therefore proceed against the land for the arrears of land revenue.

3. The attention of the Board is also invited to the fact that standing trees in the mulpatta forest included in the holding are parts of the estate of the minors and consequently those trees cannot be sold for arrears of revenue which accrued subsequent to the accession of the minors.

To

The Board of Revenue.

REVENUE DEPARTMENT.

C.F.17.

29/11

49

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..		
When copied ..		
When examined..		
When signed ..		
When despatched.		

SUBJECT:—

READ AGAIN G.O.No.619 Rev., dated 17-3-1937 ~~10~~ (E)

" " " 1870 " " 15-9-1937 ~~10~~ (C)

READ *ALSO*:—

No. 5514-E/38 From the Board of Rev., Ref. No. C.6364/38-1, dated 4-10-1938

" ——— " ——— " ——— " ——— 19——.

" ——— " ——— " ——— " ——— 19——.

Order / Ms. No. 3080, dated 1.12. 1938.

The Government approve the proposal of the Board of Revenue that the collection of the arrears of land revenue relating to faslis 1342 to 1347 on holding No.1 of Mudur village, Coondapur taluk, South Kanara district, should be suspended till the end of fasli 1348.

2. As regards the question raised by the Collector of South Kanara whether, when the property covered by the holding mentioned in para 1 above is brought to sale by the Liquidator of

of the Laxmi Forest Company or by the assignee of the mortgage decree over the property, the Government can claim the arrears of land revenue from the sale proceeds of the property, the Government agree with the view expressed by the Government Pleader, Mangalore, that the Government cannot claim the sale proceeds. The land revenue is, however, a paramount charge on the land and the land sold in execution of the mortgage decree will be subject to this charge in the hands of the purchaser. The Government can therefore proceed against the land for the arrears of land revenue after such sale.

para 1 at p 6 NF

3.The attention of the Board is also invited to the fact that standing trees in the mulpatta forest which are permanently attached to the land form part of the estate which descended to the minors by inheritance and consequently cannot be sold during their minority for arrears of revenue which

p 9 NF

accrued subsequent to their accession.

Crops, ~~on the land~~ if any, raised on the land subsequent to their accession ~~could~~ can however be proceeded against for arrears of revenue.

29/11

29.11.38

To the Board of Revenue.